

CC92-237

DOCKET FILE COPY ORIGINAL

RECEIVED

From: Dan Bart <dbart@tia.eia.org>
To: FCCMAIL.SMTPNLM("anne.la.lena@wcom.com", "pkhart@us...
Date: 12/29/97 1:52pm
Subject: NECA's Request for Additional Fee. Recommendation of the Steering Group and Request for NANC Members

DEC 29 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Al, I am responding to your 12/22 EMAIL. I was on Holiday after the 12/19 Steering Group Call until today, and I noted that you had cancelled the previously discussed full NANC conference call based on the FCC's General Counsel's decision. I would have preferred a discussion on this important and potentially expensive B/C decision.

In the first instance, I am concerned about the process we are now using to develop a NANC recommendation to the FCC for its decision on the B/C agent. In the December NANC meeting the NANC agreed the Steering Group would have a call to discuss issues, get some more factual information, and bring that output to the full NANC for "its" review, discussion, and final recommendation to the FCC on the NECA request. I believe the FACA and the NANC procedures provide that "the NANC" makes decisions on what to recommend to the FCC, not its Working Groups, Steering Groups, or its Chair. I believed a face-to-face meeting was not required, but it could have been a conference call where all NANC members could speak and hear opinions of others before being asked for their individual votes or positions. I STRONGLY object to a process where NANC members are told, without an opportunity to discuss and listen to different points of view of other parties, that they should just "send an e-mail to the Chair of NANC" and you will presumably tell us the result after the ballot closes. I do not believe you would not accurately report the result, but I also do not think the "process" should give the "appearance" that one NANC member gets to count up the votes and then tell the other NANC members the result. That, in and of itself sends the "wrong message."

Although I would have preferred the conference call in order to allow the opportunity to hear other points of view, a second best might be an email "chat" among the NANC members and then a call for final votes or positions to be sent to a neutral party like the FCC. Although you are Chair, others can note you represent a service provider and thus must be perceived as having a bias in whatever is best for Frontier, and the process should not put you in any "appearance of conflict" position.

On the "merits" of what is being decided, I did not join with the majority of the Steering Group, since I believe NANC told all the bidders that the NANC process would allow "any" awardee, now or in the future, to bring issues to NANC of changed or expanded requirements with a request for "equitable consideration." We originally discussed this in the context of the workload on the NANPA and implicitly on any other changed requirement from that which we asked parties to bid on. I find no fault with such a process and think that is what NANC is there to do. However, I am also conscious of the arguments of some NANC members, that this was "a firm fixed bid" and we should not make "any" adjustments. I also note that there was quick "consensus" at the December NANC meeting and in the 12/19 Steering Group call that the additional 2 years of audits for years 2 and 4, was a "change in requirements" and thus, ANY bidder or B/C agent should be allowed an equitable adjustment for this changed requirement.

When you cut through the rhetoric and emotion, the debate seems to be not over whether NANC should recommend equitable adjustments from time-to-time to the FCC, but over "which particular items" have been justified to NANC to convince it to recommend such an adjustment to the FCC. Increased NANPA loads over the RFP, probably Okay; Additional 2 years of audits beyond RFP, OKAY. Increased expenses for FCC-ordered legal structure, Director's D/O insurance, and travel reimbursement

No. of Copies rec'd 2
 List A B C D E

for Directors' travel, GREAT DEBATE, with some saying don't even discuss or consider, "sends the wrong message."

If the "message" being sent is that the NANC will give careful consideration to ANY request for an equitable adjustment and may decide, after an opportunity for discussion and debate, to allow (i) all, (ii) some, or (iii) none of the request, I, as a NANC member, see no problem with that message, now or in the future, being sent by NANC. Thus, I am willing to "consider" the NECA request for equitable adjustment and decide whether or not some, none, or all of that adjustment should be allowed in the NANC recommendation to the FCC.

If none were ultimately allowed and that caused NECA to be "unwilling or unable" to perform as B/C agent, then I agree the FCC Order says the job goes to Lockheed Martin at the significantly higher cost to industry.

From my review of what has been presented, I see 3 Categories of costs:

Category A, PROFITS, that is the part of the bid price which goes to make shareholders and the entity's Board happy. I do not know what amount of the Lockheed bid was in this category, but NECA advises it is non-profit and thus this status tends to make this category of cost de minimus for it. Cost advantage NECA.

Category B, COSTS TO DO THE WORK. These costs are the normal items to do the task at hand, in this case, determine revenue requirement, and levy the tax by sending the invoices, and reporting to NANC and FCC, pay NANPA. I would have assumed that NECA would have an advantage in this category (as well as Category A) since this is basically what it does for existing funds like TRS now, and it has the databases, systems, and experience already, where Lockheed would at a minimum need to create them, and does not have such "experience". Thus, I was not surprised that the NECA bid was so much under Lockheed's in the first instance given the advantages NECA would have in Category A and B costs.

Category C, COST FOR NEUTRALITY. In this Category, it is assumed Lockheed is already neutral so they would have no significant need for cost recovery here. NECA, however, was found to be "non-neutral" and needed to have a "neutrality fix" in order for its bid to be considered, and NANC agreed to that. The question thus becomes, does the "handicap" of the costs of the "neutrality fix" so outweigh the other Differentials in Category A and B, so as to make NECA a losing bidder in the first instance. In the bidding process, NECA advises it put in costs and structure to meet the neutrality criteria with an independent board of industry representatives who would monitor NECA's B/C performance and raise any flags to NANC or FCC, as required. Is what NECA "bid" a reasonable interpretation of what the RFP asked for? I, as a NANC member, would need to stand in NECA's shoes at the time of the bid response, and evaluate from the data NANC presented in the RFP, what I was being asked to bid or cost, and then bid accordingly. I believe NECA did just that. Since the RFP did not say: "Set up a Legal Corporation, Reimburse all Directors trips to meetings (minimum 4 per year), etc." I am willing to "consider" some of these FCC-mandated items for equitable adjustment, since I do not believe the NANC RFP was all that clear on this aspect of cost.

The adjustment NECA requested are all Category C costs. NECA has advised that as a non-profit which is closely regulated already by the FCC, that do not have a "pot of money" to absorb such costs, as a "for profit" company might. If they do not get relief from the NANC or FCC, they may be "willing" but may not be "able" to perform, since they have no mechanism to absorb these FCC-added

Category C costs.

From my perspective, I look at what allowance of the costs would do to the overall costs to industry for the B/C function. NANC seems ready to pass on the \$46K for the added audit costs. If you adjust NECA to what they now say they would need by way of "equitable adjustment" and adjust Lockheed Martin by the \$46K for audit costs, NECA would SAVE the industry (and many of its ratepayers) \$497,300 over the 5 years of the contract, or about \$100K a year, over Lockheed, EVEN IF THE EQUITABLE ADJUSTMENTS REQUESTED ARE GRANTED IN FULL. If some are scaled back due to teleconference Director meetings satisfying FCC mandates, thus, reducing the \$162,500 for this sub-item of the total requested adjustment -- more than half of the amount requested, the savings would be greater than \$100K a year. If the RFP had specifically stated these items of cost, presumably, NECA would have included them, and still won the B/C bid with a price almost \$500K under Lockheed Martin, due to its cost advantages in Category A and B. Some parties commented to the FCC that the "neutrality" costs were "trivial". I consider an almost 22% increase in cost more than "trivial."

If the full NANC decides to not even "consider" such adjustments but is driven by rhetoric of "sending the right message" then the effect of that recommendation, if accepted by the FCC, would immediately be adding almost \$500K to the industry's bill over what the NECA costs (with adjustments) would have been.

I consider what NECA "bid" to be a reasonable response to the RFP to cure the neutrality issue. I consider what the FCC imposed by its Order to be "costs" with very little added "benefits" of making NECA "more neutral" as B/C, thus, I would be willing to allow an adjustment for such FCC-mandated costs (while also trying to lower them or eliminate them altogether with the FCC). One way to do this would be to allow presentation of the "actual expenses" not to exceed some NANC-prescribed and FCC-approved amount, for each item requested, while also working with FCC to "clarify" or "modify" some of these added regulatory costs downward. Thus if the travel expenses are actually not what was "estimated" then the industry gets this benefit and not NECA.

I do not support, "low-balling" an initial bid, and trying to get well on the "change orders". NANC must always guard against such abuses. However, giving consideration for "equitable" adjustments for increased requirements is not such a case, in my opinion. I abstained from the Steering Group majority, assuming the full NANC would have an opportunity to discuss the merits. Now I am not even sure of that.

TIA is not a service provider and does not represent service providers, thus, we do not suffer the consequences of such "added" costs, either the NECA requested equitable adjustment (\$302K + 46K for audits), or the full hit of the \$302K, 46K for audits and 497,300 for Lockheed Martin, in adjustments, if Lockheed gets the contract. Good business says if I can get the job done and save \$497,300 for the industry, that's the way to go, if I do not detect any "gaming" of the system, but an honest effort to comply with the requirements. TIA members would hope the industry might spend some of that "saved" \$497K on new equipment.

Thus, I would allow consideration of the equitable costs, an attempt with the FCC to "mitigate" such costs, and a process whereby NECA would only get "actual" costs each year under this proviso, up to a "not to exceed amount" based on their input to NANC now. But I would still rather have this issue "discussed" by the full NANC. An Email to FCC is second best.